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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

A.S.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D045373

(San Diego County
Super. Ct. No. J 515119 A/B)

Proceedings in mandate after reference to a Welfare and Institutions Code section
366.26 hearing. Cynthia A. Bashant, Judge. Petition denied.

A.S. (the mother) seeks review of orders terminating her reunification services and setting a Welfare and Institutions Code¹ section 366.26 hearing regarding her two children, A.O. (A.) and T. O., Jr. (T). She contends the court abused its discretion in terminating reunification services because she made substantial progress in her reunification plan and in alleviating the problems that brought the matter before the court. We deny the petition.

FACTUAL AND PROCEDURAL BACKGROUND

On August 19, 2003, the San Diego Health and Human Services Agency (the Agency) petitioned on behalf of six-month-old A. under section 300, subdivision (b), alleging she was at risk of harm because she periodically had been exposed to violent confrontations between her parents in that her father T.O. (the father) had grabbed and dragged the mother, pushed her out of the house, slapped her, and pushed her out of a car. The petition also alleged a history of domestic violence and said the mother minimized the violence and continued to live with the father.

The social worker reported A. had been repeatedly exposed to increasing domestic violence between the parents and on July 26 she was directly involved in an altercation and the father took her and left the scene. Social workers met with the mother and offered assistance, but the mother made excuses for the father and said she did not think the situation was especially dangerous. The maternal grandmother (the grandmother), who lived in Vallejo, California, told the social worker she was concerned about the

¹ All statutory references are to the Welfare and Institutions Code.

mother's and A.'s safety and thought the father might flee with A. or force the mother to leave San Diego with him and A. She was also concerned that the parents were smoking marijuana and said the mother told her the father used crack cocaine.

The court ordered A. detained in out-of-home care and ordered liberal, supervised visitation for the mother. In accordance with the mother's wish that if A. could not be with her she wanted her to live with the grandmother, A. was detained with the grandmother in Vallejo. The mother's case plan included counseling, a psychological evaluation, domestic violence and substance abuse treatment and parenting education.

On September 11 the social worker reported the mother was living in a shelter and was employed. She said she had ended her relationship with the father and was making plans to provide a safe home for A. In an October 1 report, the social worker said the mother had left the shelter and refused to give the social worker her address or telephone number.

At the jurisdictional and dispositional hearings on October 1 the mother submitted to the allegations of the petition and the court found them true. It declared A. a dependent child, placed her with the grandmother, gave the social worker discretion to lift the supervision requirement and expand visits and authorized funding for the mother to visit A. in Vallejo once each month.

The psychologist who evaluated the mother reported the mother alternated between being dependent and rebelling against that dependency. The psychologist opined the mother could not understand that her volatile relationship with the father could harm A. She said the mother had a significant attachment to A., but harbored a

debilitating anger toward the grandmother and was in dire need of psychotherapy. The psychologist recommended one year of domestic violence treatment and at least three months of drug testing.

In early March 2004 the social worker learned the mother had given birth to T. and that the father was present at T.'s birth. T. was born prematurely and both he and the mother tested positive for marijuana. The hospital social worker reported the mother received little prenatal care and the mother said she hid her pregnancy from the social worker because she did not trust the Agency and hoped she could somehow prove she could provide a stable home for T. before the Agency found out about his birth. She admitted using marijuana during her pregnancy, but said she did not believe it would harm her child. The Agency petitioned on T.'s behalf under section 300, subdivisions (b) and (j) based on the mother's marijuana use and A.'s petition. The court ordered T. detained in foster care after his release from a hospital, ordered that the mother be evaluated by the Substance Abuse Recovery Management System (SARMS) and granted her liberal supervised visitation.

In the April 5 six-month review report for A., the social worker reported A. was doing well in the grandmother's home. T. remained in a hospital. The grandmother was unable to care for him and it was planned that he would be placed in foster care. The mother had begun individual therapy in January and a domestic violence program in March. She telephoned A. regularly, but was not visiting her even though the grandmother had encouraged her to come to Vallejo for visits. The mother said she was

not afraid of the father, but in January she missed an appointment with the social worker, saying the father would not let her leave.

The social worker reported the mother was having regular visits with T. at his foster home and was providing breast milk for him. The father and the mother continued their relationship. The father was not attending a domestic violence program and he continued to act out in anger when under stress. The mother's therapist reported the mother had attended 8 of 30 therapy sessions during which problems of domestic violence were addressed.

On April 16 the court found the allegations of T.'s petition true and placed him in foster care. The court found the mother had made substantive progress with the provisions of her case plan and ordered her to participate in SARMS. It set a special hearing to address expanded visits with both children.

The social worker reported the mother became increasingly hostile toward Agency staff after T. was removed from her custody. She enrolled in SARMS in May, but did not enroll in the outpatient treatment program to which SARMS referred her. She instructed her therapist not to provide information to the social worker and cancelled planned visits with A. She antagonized T.'s foster mother and he had to be moved to a different foster home.

On October 25 and November 4 the court held a combined 12-month hearing for A. and 6-month hearing for T. For the hearing the social worker reported T.'s foster mother said the mother's unsupervised visits with him were going very well and he was happy when he saw the mother. The mother was not visiting A., however, and she was

not complying with SARMS requirements. She was having individual counseling and participating in domestic violence treatment, but had revoked her permission to release information, so the social worker could not verify her progress. The social worker recommended A. remain with the grandmother, with whom A. had formed a strong bond, and that T. go to live with paternal relatives in Virginia. The social worker did not believe it would be detrimental for the children not to be placed together because they had never seen each other. The social worker reported she had learned that the mother's doctor had prescribed two grams of cannabis daily as needed for the mother's chronic foot pain, lumbosacral back disease, muscle spasms and tension headaches. The social worker also said the mother's therapist reported the mother had made significant gains in developing trust in therapy and in healing from domestic violence. The therapist believed the mother would leave an abuser at the first sign of emotional, verbal or physical abuse to herself or her children. The therapist commented on the warm and gentle bond the mother had with T. The mother said she was no longer romantically involved with the father.

The social worker testified she emphasized with the mother that it was important for the Agency to be able to learn from the service providers about her progress, but the mother said she did not trust the Agency and would not sign a release. The social worker said she could not ascertain whether the children would be safe in the mother's care because she could not speak with the service providers. She said the mother had not complied with SARMS requirements. Her doctor had endorsed her marijuana use, but the Agency was concerned about her using marijuana in T.'s presence. The social worker

said she did not know if the mother was having contact with the father. The only information the social worker had about the mother's progress with her reunification services was that visits with T. were going very well.

The grandmother testified she had cared for A. since August 2003. She said the mother had visited A. one time in Vallejo and one time in San Diego. The mother telephoned A. regularly. The grandmother said her relationship with the mother was extremely strained. She said she had offered to pay the plane fare for the mother to visit A. on her first birthday and at Christmas time, but the mother refused. She supported the mother having six more months of services to try to reunify with T.

The court found the parents had not made substantial progress with the provisions of their case plans. It continued the children as dependents, terminated reunification services and set a section 366.26 hearing.

The mother petitions for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 38.1.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

The mother contends because she made substantial progress and substantially complied with her case plan the court abused its discretion in terminating her reunification services. She argues she could not meet the terms of the SARMS component of her plan because of medical reasons, but she participated in a domestic violence treatment program for eight months, there had been no further incidents of domestic violence between her and the father, and her therapist believed she would act

quickly to protect her children. She asserts she visited T. regularly, maintained stable housing and employment for six months, and the foster mother said she witnessed her positive parenting skills. She further argues that except for the father's presence at T.'s birth, there is no indication that she has remained in a relationship with him.

"The permanency hearing shall be held no later than 12 months after the date the child entered foster care" (§ 366.21, subd. (f).) The juvenile court may terminate reunification services and schedule a section 366.26 hearing at the six-month hearing if the child, or a sibling of the child, is less than three years of age at the time he or she was removed from the parent's custody if the parent has not regularly participated and made substantive progress in a court-ordered treatment plan. (§ 366.21, subd. (e); § 361.5, subd. (a)(3).) If there is a substantial probability of return within six months, however, "the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e).) A parent's failure to participate regularly in a court-ordered treatment program is prima facie evidence that returning a child to the parent's care would be detrimental. (§ 366.21, subs. (e) and (f).) A reviewing court will not disturb a court's ruling in a dependency proceeding " ' "unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318, quoting *In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 421.)

Because the mother would not allow her service providers to release information about her progress to the Agency, the mother did not show she had made progress in alleviating the problem of domestic violence that caused A. to be removed from the

parents' care. The record indicates that before A. was removed, two social workers counseled her to leave the father, but the mother minimized the problem and refused to separate from him. After A.'s removal, the mother went into a shelter and said she was making plans to live separately from the father and provide a safe home for herself and A. She soon left the shelter. The Agency helped her get an apartment and advised her to keep the address confidential, but the mother gave the father the address and he came to the home. The father was present at the hospital when T. was born.

The mother said she began participating in individual therapy in January 2004 and in a domestic violence group in March, but the social worker was not able to learn about the mother's progress because the mother revoked her permission for the service providers to give information to Agency staff. Although the social worker stressed to the mother the importance of the Agency being able to monitor her progress, the mother was so distrustful of the Agency that she refused to allow her service providers to supply information.

The court ordered the mother to enroll in the SARMS program by April 20, 2004. She enrolled on May 20, tested positive for marijuana on May 20 and 25 and June 3, and did not register for the outpatient treatment center to which SARMS referred her. During the time of A.'s dependency she told the social workers she was not using drugs, but when T. was born she and T. tested positive for marijuana. She denied continuing to use drugs and said she did not believe she was an addict. Then she provided a statement from her physician dated August 10 that stated he authorized her to use cannabis for medical purposes.

The mother said if A. could not live with her, she wanted her placed with the grandmother. Although the social worker cautioned that placing A. so far away would make visitation difficult, the mother insisted she wanted A. to live with the grandmother. The mother had opportunities to visit A., but saw her only twice during the dependency period because of her strained relationship with the grandmother.

Although the mother visited T. regularly and appeared to have a warm relationship with him, because she refused to allow her service providers to give information to the Agency, the social worker was unable to assess her progress in alleviating the potential for domestic violence and her ability to provide a safe home. Also, there were concerns about her marijuana use and her failure to visit A. On this record we cannot say the juvenile court abused its discretion in terminating reunification services and setting a section 366.26 hearing.

DISPOSITION

The petition is denied.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

IRION, J.